



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007

GRANT WOODS  
ATTORNEY GENERAL

MAIN PHONE: 542-5025  
TELECOPIER: 542-4085

September 13, 1991

Jack D. Root, Executive Director  
Structural Pest Control Commission  
1150 South Priest, Suite 4  
Tempe, Arizona 85281

RE: I91-031 (R91-022)

Dear Mr. Root:

You asked whether the licensing provisions of A.R.S. § 32-2301 et seq. are applicable to the State and its political subdivisions in light of the use of the term "person" in A.R.S. §§ 32-2301(3), 32-2311 and 32-2325 and our analysis in Attorney General Opinion 187-091. We conclude that, because the State is not a person within the definition provided in A.R.S. § 1-215(24), the State and its political subdivisions are not subject to the licensing provisions of A.R.S. § 32-2301 et seq. However, individuals, including state employees, who apply pesticides must be certified pursuant to A.R.S. § 32-2301 et seq., unless they are exempted under § 32- 2311.

You also asked whether the exemption granted by A.R.S. § 32-2311(7) extends to city or town employees applying pesticides to municipal golf courses. We conclude that the exemption granted by A.R.S. § 32-2311(7) extends to municipal employees when they apply pesticides as incidental to their work and when the pesticides used are not in toxicity categories I or II. Finally, you asked whether A.R.S. § 32-2311(7) applies to employees of the State and its political subdivisions. We conclude that it does not.

Our conclusion that the State and its political subdivisions are not subject to the licensing provisions contained in A.R.S. § 32-2301 et seq., but that individuals, including state employees are subject to the licensing provisions, is based on an analysis of the statute's language.

Arizona statutes require that "persons" engaged in the business of structural pest control or who serve as pest control advisors must be licensed by the Structural Pest Control Board. A.R.S. § 32-2325. "Person" is not defined in § 32-2301, the definition section of the chapter 22; therefore, the definition of "person" provided in § 1-215 applies:

"Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

A.R.S. § 1-215(24).

A.R.S. § 1-215 (24) specifically provides that "person" includes the State and political subdivisions only when their property is the subject of a criminal or public offense. No criminal or public offense is at issue here. It is a rule of statutory construction that when a statute enumerates the subjects it applies to, it must be construed to exclude all subjects not mentioned. Elfbrandt v. Russell, 97 Ariz. 140, 397 P.2d 944 (1965), reversed on other grounds, 384 U.S. 11 (1966); Inspiration Consolidated Copper v Industrial Commission, 118 Ariz. 10, 12, 574 P.2d 478, 480 (App. 1977). A.R.S. § 32-2301 et seq. does not make property the subject of a criminal or public offense thus the state and its political subdivisions do not fall within the scope of A.R.S. § 32-2301 et seq.

Because the State and its subdivisions do not fall within the definition of "persons," they do not have to be licensed pursuant to A.R.S. § 32-2301 et seq. Individuals, however, whether state employees or outside contractors do fall within the statutory definition of "persons." Unless they fall within one of the exemptions provided in A.R.S. § 32-2311, individuals must comply with the the provisions of § 32-2301 et seq. They must be licensed if they are engaged in the business of structural pest control or certified if they apply pesticides.

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Our conclusion here is consistent with the conclusion we reached in Attorney General Opinion I87-091. In that opinion, we were asked whether school districts could employ persons not licensed by the Structural Pest Control Board to apply pesticides in and around schools. We concluded that persons applying pesticides in and around facilities owned by the state and its political subdivisions were subject to the licensing provisions of A.R.S. § 32-2301 et seq. unless specifically exempted. See Attorney General Opinion I87-019 at 2. We found no exemption for the application of pesticides in and around state-owned facilities. See id. at 3; see also A.R.S. § 32-2311. We therefore affirm Attorney General Opinion I87-091.

You also asked whether city employees who applied pesticides to city golf courses only as incidental to their work and who used pesticides in toxicity categories other than I or II were subject to the licensing provisions of A.R.S. § 32-2301 et seq.

A.R.S. § 32-2311(2) exempts from the licensure, certification, and registration requirements of A.R.S. § 32-2301 et seq., "[p]ersons applying pesticides on property which they own, lease, or rent, unless the property is a commercial or institutional food handling establishment or a golf course." (emphasis added). A.R.S. § 32-2311(7) exempts from the licensure, certification, and registration requirements of A.R.S. § 32-2301 et seq., "[a]n employee of a city or town who applies pesticides only as incidental to [his] work and who uses pesticides other than those in toxicity category I or II."

A.R.S. § 32-2311(7) appears to conflict with A.R.S. § 32-2311(2) when, for example, incidental to their regular work, city employees apply pesticides in toxicity categories other than I or II to city-owned golf courses. The general rule is that where statutes in pari materia apparently conflict, they should, as far as possible, be construed in harmony so as to give force and effect to each. State Land Dept. v. Tucson Rock & Sand Co., 107 Ariz. 74, 481 P.2d 867 (1971). A.R.S. § 32-2311(7) can be read to carve out another exception to the requirement that persons applying pesticides to golf courses comply with the licensure requirements of A.R.S. § 32-2301 et seq. See A.R.S. §§ 32-2311(3); 32-2311(5) and 32-2311(6) (all exemptions to the licensure provisions that could apply even if the property being treated with pesticides is a golf course). This reading harmonizes the sections.

A.R.S. § 32-2311(7) specifically exempts town or city employees from the licensure requirements of this chapter if two conditions are met: First, the city or town employees must be applying pesticides in toxicity categories other than I or II; second, the application of

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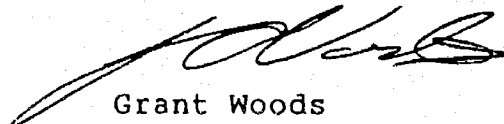
pesticides ~~must~~ be incidental to their work. If both conditions are met, then city or town employees are exempt from the licensing requirements of this chapter even while applying pesticides to a golf course. If either of the conditions is not met, then the town or city employees must be licensed unless they fall within another exemption enumerated in § 32-2311.

Finally, you asked whether the § 32-2311(7) exemption extends to employees of the state and political subdivisions other than cities or towns. We conclude that it does not.

§ 32-2311(7) is very specific as to who is exempt from licensing requirements. When the two conditions discussed above are met, § 32-2311(7) exempts "an employee of a city or town" from the licensing requirements of Article 2 of Chapter 32. When the legislature clearly manifests its intention in the statute itself, we cannot read into the statute something that departs from this manifest intent. Johnson v. Collins, 11 Ariz. 327, 464 P.2d 647 (App. 1970). Here, the legislature clearly intended to exempt only town and city employees from the licensing requirements of this chapter, and then only under restrictive conditions.

We find further support for this conclusion in the legislative amendments to A.R.S. § 32-2311. Before 1985, A.R.S. § 32-2311 exempted all state, federal, city, and county employees from the provisions of the Structural Pest Control Act. Laws 1965 (1st Reg. Sess.) Ch. 97, § 1. In 1984, the legislature repealed § 32-2311 and replaced it with a statute that did not contain this exemption. See Laws 1984 (2nd Reg. Sess.) Ch. 312, §§ 3 and 4. Had the legislature intended for § 32-2311(7) to apply to state, federal, county, and federal employees, it would have included them in the exemption, as it had done in the past. Therefore, A.R.S. § 32-2311(7) does not extend to employees of the state and its other political subdivisions, even if they meet the two conditions of this particular exemption.

Sincerely,



Grant Woods  
Attorney General

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